

FILED

IN THE CIRCUIT COURT OF WETZEL COUNTY, WEST VIRGINIA
BUSINESS COURT DIVISION

2022 JAN -4 PM 4:24

MARKWEST LIBERTY MIDSTREAM
& RESOURCES, L.L.C.,

LORI J. DEBOY
CIRCUIT CLERK
WETZEL COUNTY, WV

Plaintiff,

v.

CIVIL ACTION NO. 16-C-82
JUDGE H. CHARLES CARL, III

J.F. ALLEN COMPANY; AMEC
FOSTER WHEELER ENVIRONMENT
& INFRASTRUCTURE, INC.;
REDSTONE INTERNATIONAL, INC.;
CIVIL & ENVIRONMENTAL
CONSULTANTS, INC.; and
COASTAL DRILLING EAST, LLC,

Defendants,

v.

THE LANE CONSTRUCTION
CORPORATION,

Additional Defendant.

**ORDER GRANTING RULE 60(B)(5) MOTION FOR RELIEF FROM
FINAL JUDGMENT ORDER DUE TO SATISFACTION OF JUDGMENT**

This matter came before the Court this 4th day of January 2022, upon the *West Virginia Rule of Civil Procedure 60(b)(5) Motion for Relief From Final Judgment Order Due to Satisfaction of Judgment* filed by Defendant J. F. Allen Company, Defendant AMEC Foster Wheeler Environmental & Infrastructure, Inc., and Plaintiff MarkWest Liberty Midstream & Resources, L.L.C., and upon the *Response to Rule 60(b)(5) Motion* filed by Redstone. The Court dispenses with oral argument because the facts and legal contentions are adequately presented in the materials before the Court and argument would not aid the decisional process. So, upon the

full consideration of the issues, the record, and the pertinent legal authorities, the Court rules as follows:

FINDINGS OF FACT

1. This civil action involves a dispute arising around the construction of a hybrid retaining wall in Wetzel County, West Virginia at a natural gas processing plant owned by Plaintiff MarkWest Liberty Midstream & Resources, L.L.C. (hereinafter “Plaintiff” or “MarkWest”).

2. Plaintiff contracted with Defendant J.F. Allen Company (hereinafter “Defendant” or “J.F. Allen”) to construct a large retaining wall. J.F. Allen subcontracted with Defendant AMEC Foster Wheeler Environment & Infrastructure, Inc. (hereinafter “AMEC”) to design the Wall and provide quality control. J.F. Allen subcontracted with Defendant Redstone International, Inc. (hereinafter “Redstone”) to construct the steel pile anchored portion of the Wall.

3. After extensive pretrial litigation, this matter came before the Court on September 21, 2020, for a nearly four-week bench trial. On October 18, 2021, this Court entered its Judgment Order.

4. Counsel for Defendant J. F. Allen Company, Defendant AMEC Foster Wheeler Environmental & Infrastructure, Inc., and Plaintiff MarkWest Liberty Midstream & Resources, L.L.C. thereafter jointly filed the instant motion on December 27, 2021, and represented to the Court that they have satisfied the judgments by and between them¹ as entered by the Court in its Judgment Order.

5. The parties represented that J.F. Allen has paid MarkWest the sum of \$6,318,909.26 in full and complete satisfaction of the total judgment attained against it by MarkWest, including all applicable post-judgment interest. This sum was derived from the total judgment entered against

¹ The Court notes that the parties proffered that the instant motion does not pertain to J.F. Allen’s judgment against Redstone, and that Redstone did not join the instant motion. *See* Joint Mot., ¶¶27-29.

J.F. Allen for MarkWest in the amount of \$7,905,686.66 deducted by the amount of \$1,586,777.40 awarded to J.F. Allen against MarkWest.

6. The parties represented that AMEC has paid MarkWest the sum of \$423,099.22 in full and complete satisfaction of the total judgment attained against it by MarkWest, including all applicable post-judgment interest.

7. The parties represented that AMEC has paid J.F. Allen the sum of \$2,007,671.30 in full and complete satisfaction of the total judgment attained against it by J.F. Allen, including all applicable post-judgment interest.

8. Further, upon the representations of counsel, review of the file and furthermore, the Court deeming it otherwise proper to do so, the Court hereby finds that J.F. Allen and AMEC have fully and completely satisfied the judgments attained against them by MarkWest in this civil action.

9. Further, upon the representations of counsel, review of the file and furthermore, the Court deeming it otherwise proper to do so, the Court hereby finds that AMEC has fully and completely satisfied the judgment attained against it by J.F. Allen in this civil action.

10. Further, upon the representations of counsel, review of the file and furthermore, the Court deeming it otherwise proper to do so, the Court hereby finds that MarkWest has fully and completely satisfied the judgment attained against it by J.F. Allen in this civil action.

11. The Court notes that J.F. Allen was awarded certain sums in its favor from Defendant Redstone, and the parties have proffered to the Court that Redstone has not satisfied the judgment attained against it by J.F. Allen, and further that the parties' motion does not relate to or affect J.F. Allen's judgment against Redstone. *See* Joint Mot., ¶¶27-29.

12. Defendant Redstone submitted a Response to the instant motion on or about December 31, 2021, indicating that this civil action was not the proper place in the county records to record the satisfaction of judgments, but that it otherwise had no objection to the motion. While recognizing Redstone has no standing to make objection, the Court did give consideration to its position on the matter.

13. The Court now finds the instant Motion is ripe for adjudication.

CONCLUSIONS OF LAW

14. The instant motion was brought under Rule 60(b)(5) of the West Virginia Rules of Civil Procedure. Rule 60 of the West Virginia Rules of Civil Procedure governs relief from judgment or order. Specifically, Rule 60(b) of the West Virginia Rules of Civil Procedure governs “mistakes, inadvertence, excusable neglect, unavoidable cause, newly discovered evidence, fraud, etc.” Rule 60(b) provides, in pertinent part: On motion and upon such terms as are just, the court may relieve a party or a party’s legal representative from a final judgment, order, or proceeding for the following reasons...(5) *the judgment has been satisfied, released, or discharged, or a prior judgment upon which it is based has been reversed or otherwise vacated, or it is no longer equitable that the judgment should have prospective application...* W. Va. R. Civ. P. 60(b)(5).

15. Relief under Rule 60(b) is essentially discretionary. *Intercity Realty Co. v. Gibson*, 154 W. Va. 369, 175 S.E.2d 452 (1970). Further, the Supreme Court of Appeals of West Virginia has directed that Rule 60(b)(5), which permits relief from a judgment where “it is no longer equitable that the judgment should have prospective application,” is ordinarily limited to instances where the controlling circumstances of the action have changed subsequent to the entry of the judgment and is not to be invoked as a substitute for an appeal; in considering a

motion for relief under subdivision (b)(5) of this rule, a circuit court should proceed with caution. *Nancy Darnle M. v. James Lee M.*, 195 W. Va. 153, 464 S.E.2d 795 (1995).

16. Here, the Court finds the instant motion, albeit rather unusual, but properly made under the facts and circumstances of this matter. The Court recognizes and agrees with counsel for Redstone that the usual statutory procedure for release of judgment liens is found in West Virginia Code, Chapter 38, Article 12, Release and Assignment of Liens. The Court also recognizes that the usual procedure requires the Clerk of the County Court to note the release of a judgment lien in the Judgment Book, not the docket of the circuit court civil action. *See W. Va. Code § 38-12-12*. However, the Court finds this procedure applies only to those situations in which a *judgment lien is recorded* in the proper county.

West Virginia Code § 38-12-1(a) provides, in pertinent part:

(a) Every person entitled to the benefit of any lien on any estate, real or personal, or to the money secured thereby, whether the lien was created by conveyance, **judgment**, decree, lis pendens, notice of attachment, deed of trust, contract or otherwise, shall be required to furnish and execute an apt and proper written release thereof free of charge to the debtor whose obligation secured by such lien has been fully paid and satisfied, **if the lien is of record in the proper county.**

W. Va. Code Ann. § 38-12-1 (West) (emphasis added).

17. It is not known by this Court if the judgment/lien was recorded in the proper county. The Court notes that the amounts owed between the parties as set forth in the Judgment Order of this Court entered on October 18, 2021, have been fully paid and satisfied, as represented by counsel, and finds that it would “no longer be equitable that the judgment should have prospective application.” Therefore, the Court, in its discretion, will grant the relief requested. The Court further finds in its discretion, and without the knowledge of whether or not an actual judgment lien has been filed in the proper county which would require the provisions of W.Va. Code Ann. § 38-

12-1, et seq, as amended, to be complied with to release the judgment liens, that in the interest of justice it would be beneficial to the parties and the public to be made aware of the satisfaction of the judgment liens between the parties hereto.

18. Likewise, the Court sees no prejudice to Redstone or any other person or entity, and notes that Redstone has no objection to the relief granted, and its appeal rights are not affected by the entry of this Order.

19. However, it is hereby ORDERED, ADJUDGED, and DECREED that if any of the moving parties have, in fact, filed a lien in the County Clerk's office, the parties are directed to comply with the relevant West Virginia Code sections regarding the release of a judgment lien for purposes of releasing the liens of record in the proper county.

20. THEREFORE, it is hereby ORDERED, ADJUDGED, and DECREED that MarkWest's judgments against J.F. Allen and AMEC are SATISFIED, and the Clerk is directed to make appropriate entries, including recording this Order in its Judgment Book, reflecting that J.F. Allen and AMEC have fully and completely satisfied the judgments.

21. THEREFORE, it is further hereby ORDERED, ADJUDGED, and DECREED that J.F. Allen's judgment against MarkWest is SATISFIED, and the Clerk is directed to make appropriate entries, including recording this Order in its Judgment Book, reflecting that MarkWest has fully and completely satisfied the judgment.

22. THEREFORE, it is further hereby ORDERED, ADJUDGED, and DECREED that J.F. Allen's judgment against AMEC is SATISFIED, and the Clerk is directed to make appropriate entries, including recording this Order in its Judgment Book, reflecting that AMEC has fully and completely satisfied the judgment.

23. Notwithstanding, is hereby ORDERED, ADJUDGED, and DECREED that nothing contemplated in this Order does in any way affect the rights of any party relative to the pending appeal of this Court's Judgment Order filed by Redstone. Further, this Order does not relate to or affect the judgment obtained by J.F. Allen against Redstone. The Judgment Order is not vacated; the Court is simply placing of record an Order recognizing that the judgments between Defendant J. F. Allen Company, Defendant AMEC Foster Wheeler Environmental & Infrastructure, Inc., and Plaintiff MarkWest Liberty Midstream & Resources, L.L.C. have been satisfied, and the Judgment Order ordering those judgments no longer has prospective application, at the request of the parties.

24. The Clerk shall enter the foregoing and forward attested copies hereof to all counsel of record, and to the Business Court Central Office at Business Court Division, 380 West South Street, Suite 2100, Martinsburg, West Virginia, 25401.

ENTERED this 4th day of January, 2022.

A handwritten signature in black ink, appearing to read 'H. Charles Carl, III', is written over a horizontal line.

JUDGE H. CHARLES CARL, III
West Virginia Business Court Division